

**STATE OF INDIANA – COUNTY OF ST. JOSEPH
IN THE ST. JOSEPH CIRCUIT, SUPERIOR, AND PROBATE COURTS**

**Notice of Proposed New Rule or Amendment(s) to Local Court Rule(s)
June 1, 2014**

In accordance with Trial Rule 81 of the Indiana Court Rules, the St. Joseph Circuit, Superior, and Probate Courts hereby give notice to the bar and the public that the Courts propose to amend the Local Rule(s) for the courts of record of St. Joseph County, effective January 1, 2015, except for the bond schedule. The amended Bond Schedule at Appendix A-1 to Local Criminal Rules, 300 Series will be effective on July 1, 2014. All new text is shown by underlining and deleted text is shown by ~~striketrough~~.

The time period for the bar and the public to comment shall begin on June 2, 2014, and shall close on June 30, 2014. The proposed amendments to the rule will be adopted, modified or rejected before July 31, 2014, and, if required, the final version of the rule will be submitted to the Indiana Supreme Court for review and approval not later than August 1, 2014.

Comments by the bar and the public should be made in writing and mailed, or emailed, to:

Lisa A. Plencner, Court Administrator of the St. Joseph Circuit Court, Attn: Public Comment on Local Rules, St. Joseph County Courthouse, 101 S. Main Street, Room 223, South Bend, Indiana, 46601; or lplencne@co.st-joseph.in.us.

A paper copy of the proposed amended local rule(s) will be made available for viewing in the office of the Clerk of St. Joseph County, St. Joseph County Courthouse, 101 S. Main Street, South Bend, Indiana during normal business hours. Persons with Internet access may view the proposed amended local rules at the following websites:

<http://www.stjoebar.org> or <http://www.courts.IN.gov/rules/local>

*Hon. Michael G. Gotsch
Judge, St. Joseph Circuit Court*

*Hon. Jenny Pitts Manier
Chief Judge, St. Joseph Superior Court*

*Hon. James Fox
Judge, St. Joseph Probate Court*

112.1 Preamble. ~~In all cases, the Courts in St. Joseph County shall proceed pursuant to these Rules unless a~~ Retention and Destruction of Evidence APPLICATION OF RULE ~~These Rules shall apply to the retention of evidence by St. Joseph Circuit, Probate and Superior Courts unless the~~ Court directs a longer retention period after motion by any party or on its own motion.

112.2 Retention Periods for Evidence introduced in Civil Proceedings Including Adoption, Paternity and Juvenile Proceedings, but not including Ordinance Violation or Infraction Proceedings

112.1.1 ~~Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings.~~ All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

The Court reporter must retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

112.1.2 112.3 **Retention Periods for Evidence Introduced in Ordinance Violation, Infraction, Criminal Misdemeanor, Class D, Class C, Level 4, Level 5, Level 6 Felonies and Attempts.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter

as exhibits must be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is ~~later~~ latest, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The Court reporter must retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

- 112.1.3 112.4 Retention Periods for Evidence Introduced in Criminal Class B, Class A, Level 1, Level 2, Level 3 Felonies, Murder and Attempts.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The court reporter must retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

Courts should be encouraged to photograph as much evidence as possible and courts and parties reminded of the requirements of Appellate Rule 29(B).

~~112.2—Non-documentary and Oversized Exhibits.~~

~~112.2.1 **Photographing Physical Evidence.** The parties are encouraged to photograph physical or tangible evidence and to substitute the photograph into the record upon the conclusion of trial or hearing as a method of avoiding the long-term retention of large, bulky or unwieldy evidence.~~

112.2.2 112.5 Non-documentary and Oversized Exhibits. Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but must remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits must be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits. ~~The parties are also reminded of the requirements of Appellate Rule 29(B).~~

Under no circumstances should drugs, currency or other dangerous or valuable items be included in appellate records.

~~112.2.3 Dangerous or Valuable Items. Under no circumstances should drugs, currency, or other dangerous or valuable items be included in appellate records.~~

~~112.2.4 Biologically Contaminated Evidence. A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however, contained, shall be handled or passed to jurors or sent to the Jury Room.~~

112.3 112.6 Notification and Disposition.

112.3.1 ~~Notice. (1) In all cases, The Court must provide notice, by mail, or as otherwise provided, herein, (see Appendix) to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed pursuant to this Rule if not timely retrieved. by a date certain if not retrieved before that date.~~ Counsel and parties have the duty to keep the Court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition dates (see Appendix) and evidence should be held in a secure area. At the time of removal, a detailed receipt must be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file. Notice shall be provided in a manner most likely to provide actual notice to counsel and the parties, which may include regular mail, e-mail, publication, posting, or

~~other appropriate method. Counsel and parties have the duty to keep the court informed of their current addresses, and notice to the last current address or by publication shall be sufficient.~~

~~112.3.2 Retention and Disposition Log. Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file.~~

(2) The notice (see Appendix) referred to above shall be actual notice, provided by the Clerk to the Plaintiff upon the initiation of an action and issued to the Defendant(s) pursuant to Trial Rule 4, or sent at the time a party first appears in a case in all cases filed after the effective date of this Rule. The notice referred to above, for all civil cases filed prior to the effective date of this Rule, may be actual notice, if possible, issued at the time of a final disposition in the case or, if a final disposition has been entered prior to the effective date of this Rule, at the time the evidence is scheduled for destruction: Provided, however, that for those civil cases in which a final disposition was entered at the trial level more than ten (10) years prior to the effective date of this notice, or with respect to which it is not possible to give actual notice, the Court shall annually, issue notice of intent to destroy evidence by publication in a newspaper of general circulation within St. Joseph County, posting at the County Courthouses. For all civil cases initiated after the effective date of this rule, the party initiating the action must provide to the Clerk of the Court, at the time the case is initiated or at any time

additional defendants are added to the case, a sufficient number of copies of the notice for service upon each defendant, as well as a copy to be returned to each Plaintiff and a copy for the Court's file. For all civil cases initiated prior to the effective date but disposed of after the effective date of this rule, the Court must be provided with a sufficient number of copies of the notice for service on all parties participating in all matters at which tangible evidence was offered or admitted. Actual notice may be accomplished by electronic mail if so authorized by the local electronic filing rules, infra.

112.3.3 ~~Disposition or Destruction.~~ In all cases, evidence which is not retaken after notice should be disposed of by the Sheriff on the court's order. The sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value (i.e. less than \$25.00 in value). Evidence of some value should be auctioned by the sheriff with proceeds going to the county general fund.
(3) Evidence which is not retaken after notice and expiration of the applicable retention period should be disposed of by the Sheriff, or his agent, on the Court's Order. The Sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the Sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes, ct I.C. 35-33-5-5(c)(2).

~~112.5 Precedence.~~ These Rules and their retention periods take precedence over inconsistent language in statutes, e.g. Ind. Code § 35-33-5-5(c)(2).

(4) Notwithstanding any provision of this rule to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

112.7 Biologically Contaminated Evidence. A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the Court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however contained, shall be handled or passes to jurors or sent to the jury room.

APPENDIX B TO LOCAL GENERAL AND ADMINISTRATIVE RULES,

100 SERIES

NOTICE OF INTENT TO DESTROY

CIVIL CAUSE OF ACTION

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to this case that has been or will be placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, *four (4) months* after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for *two (2) years* from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest. These time periods may be altered by Court order.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF INTENT TO DESTROY
INFRACTION AND ORDINANCE VIOLATION CASES

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No.

_____ that has been or will be placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, *four (4) months* after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for *two (2) years* from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest. These time periods may be altered by Court order.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF INTENT TO DESTROY
MISDEMEANOR CASES

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No.

_____ that has been or will be placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, *three (3) years* after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for *three (3) years* from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF INTENT TO DESTROY

CRIMINAL CLASS D, CLASS C, LEVEL 4, LEVEL 5, LEVEL 6 FELONY AND ATTEMPTS

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No.

_____ that has been or will be placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, *three (3) years* after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for *three (3) years* from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF INTENT TO DESTROY
CRIMINAL CLASS B, CLASS A, LEVEL 1, LEVEL 2, LEVEL3 FELONIES, MURDER AND
ATTEMPTS

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No.

_____ that has been or will be placed in the custody of the court reporter as exhibits must be taken away by the parties offering them in evidence, *twenty (20) years* after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for *twenty (20) years* from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

EVIDENCE RETENTION LOG – CIVIL PROCEEDINGS

	DATE	NOTES
TRIAL COMMENCED		
TRIAL CONCLUDED		
JUDGMENT ENTERED		
APPEAL?	Yes / No	
CERTIFIED OPINION COURT OF APPEALS		
CERTIFIED OPINION SUPREME COURT		
FURTHER TRIAL PROCEEDINGS	Yes/No	See attached log, page 2
NOTICE OF RETREIVAL / INTENT TO DESTROY (When Final disposition occurred prior to MM/DD/YEAR		Plaintiff: Defendant:
DESTRUCTION DATE		

209.3. Alternative Dispute Resolution.

On the Court's own motion or initiative, the parties may be required to attempt alternative dispute resolution (ADR). Such ADR efforts may include, at the Court's discretion, mediation and/or settlement conferences and may require one or more sessions or sessions lasting a specific amount of time.

One or more of the parties may request that the Court order the parties engage in ADR. Such a request must be in writing and must be accompanied by a memorandum informing the Court of the nature of the case, the attorneys or unrepresented litigants involved, and a history of the settlement negotiations that have taken place to that date and that the previous settlement negotiations made in good faith have failed.

At any mediation or settlement conference, counsel for each party shall be present, in person, and each party or a designated representative having complete authority to settle the matter in question shall be present in person. Any party intending to appear by a designated representative shall advise all other parties to the mediation or settlement conference of that fact and of the identity of the designee not fewer than ten (10) days prior to the commencement of the mediation or settlement conference. Upon request and by leave of court, a party or representative of a party may be allowed to participate in said settlement conference by telephone in lieu of a personal appearance. Should any party or counsel for any party violate the requirements of this rule concerning attendance, the Court may impose sanctions.

308.1 Bond Schedule. Each of the Courts, individually or in concert, may establish a presumptive bond schedule for criminal cases. The schedules ~~is~~ are attached hereto as Appendix A. and Appendix A-1

308.6 Withdrawal of Public Defender Appointment

The appointment to serve as a public defender in any single criminal proceeding shall terminate upon entry of sentencing order and dispositional order the appearance of counsel shall be withdrawn from the Court's case management system, unless a person appointed as public defender makes a request of the court to the contrary. At sentencing or disposition, the Defendant shall be notified of the termination of the Public Defender appointment.

308.6 Access to Pre-Sentence/Pre-Dispositional Reports

(a) Any:

(1) presentence report or memoranda; and
(2) report of a physical or mental examination;
submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

(1) the convicted person and his counsel who has entered his or her appearance for the convicted person in the proceeding at issue ;
(2) the prosecuting attorney;
(3) the probation department;
(4) the community corrections program in which and offender is placed under IC 35-38-2.6; and
(5) the Indiana criminal justice institute established under IC 5-2-6;
except where specifically required or permitted by statute or upon specific authorization by the by the court and the convicted person.

Appendix A-1. TO LOCAL CRIMINAL RULES, 300 SERIES

PRESUMPTIVE BOND SCHEDULE

FOR COURTS IN ST. JOSEPH COUNTY, INDIANA

<u>OFFENSE</u>	<u>BOND AMOUNT</u>
Murder	None —No bond if guilt is evident or presumption of guilt is strong
<u>Level 1</u>	
<u>Level 1 Felony</u>	<u>\$50,000/\$5,000</u>
<u>Level 1 Felony—crime of violence*</u>	<u>\$100,000/\$10,000</u>
<u>Level 2</u>	
<u>Level 2 Felony</u>	<u>\$50,000/\$5,000</u>
<u>Level 2 Felony—crime of violence*</u>	<u>\$100,000/\$10,000</u>
<u>Level 3</u>	
<u>Level 3 Felony</u>	<u>\$30,000/\$3,000</u>
<u>Level 3 Felony—crime of violence*</u>	<u>\$50,000/\$5,000</u>
<u>Level 4</u>	
<u>Level 4 Felony</u>	<u>\$20,000/\$2,000</u>
<u>Level 4 Felony—crime of violence*</u>	<u>\$40,000/\$4,000</u>

Level 5

<u>Level 5 Felony</u>	<u>\$10,000/\$1,000</u>
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<u>Level 5 Felony—crime of violence*</u>	<u>\$30,000/\$3,000</u>
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Level 6

<u>Level 6 Felony</u>	<u>\$5,000/\$500</u>
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<u>Level 6 Felony—crime of violence*</u>	<u>\$10,000/\$1,000</u>
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<u>Level 6 Felony—DUI or drug offense</u>	<u>\$7,500/\$750</u>
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Misdemeanors

<u>A Misdemeanor: Domestic Battery, Battery, Intimidation, Invasion of Privacy and DUI (Class A or C)</u>	<u>\$500 cash</u>
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<u>A Misdemeanor</u>	<u>\$250 cash</u>
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<u>B Misdemeanor</u>	<u>\$150 cash</u>
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<u>C Misdemeanor</u>	<u>\$150 cash</u>
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* “Crime of violence” (as defined by I.C.35-50-1-2(a)) includes: murder, attempted murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, aggravated battery, kidnapping, rape, criminal deviate conduct, child molesting, sexual misconduct with a minor (Level 1 or 2/Class A or B), robbery (Level 2 or 3/Class A or B), burglary (Level 2,3 or 4/Class A or B), OWI causing death or serious bodily injury, and resisting law enforcement.

Proposed May 29, 2014, effective for crimes committed after July 1, 2014.

The effective date of this Presumptive Bond Schedule is July 1, 2014.

LOCAL PROBATE AND ESTATE RULES FOR ST. JOSEPH COUNTY
(600 SERIES)

Rule LR71-PR00-601. Notice.

601.1. Attorney Responsibilities. Whenever notice by publication and/or written notice by U.S. Mail is required ~~to be given~~ either in writing or by publication, the attorney shall prepare ~~such~~ the notice and take such actions consistent with local practices to ~~shall~~ ensure that such notice is properly published and/or served ~~by certified mail, return receipt requested~~. In all respects, the notice shall comply with all statutory requirements. ~~It shall~~ be the attorney's ~~shall be~~ responsibility responsible to establish proper service of notice ~~ascertain and provide adequate proof thereof regarding whether notice was properly served prior to bringing~~ the subject a matter of the notice before ~~to~~ the Court.

601.2. Motions and Petitions to Accompany Notice. Where notice is required because a motion or petition has been filed with the Court, a copy of the ~~Copies of~~ petitions or motions shall be served along with the written notice. If the notice is given by publication, the notice shall adequately describe the subject matter of the petition or motion and describe how to obtain a copy of the petition or motion without charge. ~~sent with all notices where the hearing involved arises from the matters contained in the petition or motion.~~

601.3. Service of Notice of Hearing. ~~Whenever any estate or guardianship account (including a final account in a supervised estate) is set for hearing, copies of the account must be served with the notice of hearing.~~ Unless waived by a person entitled to notice, a copy of the verified account must be served with written notice of the hearing on final settlement of the estate or guardianship. If notice is given by publication, the notice shall explain how to obtain a copy of the accounting without charge.

601.4. Notice of Opening of Estate. Notice of the opening of an estate shall be sent by First Class United States Mail to all distributees of the estate and also to all reasonably ascertainable creditors; however, the use of “certified mail, return receipt requested,” to serve such notice is recommended.

601.5. Notice of Insolvent Estate. When a Petition is filed to determine that an estate is insolvent, Notice of the hearing to be held on a the Petition along with a copy of the Petition, to determine an estate insolvent shall be served on all ~~Adopted July 26, 2013~~
~~Page 144 Effective January 1, 2014~~ interested parties, including the local representative of the Inheritance Tax Division of the Indiana Department of Revenue.

601.6. Electronic Filing. Any reference within the Local Probate Rules for Saint Joseph County to “written notice,” “notice in writing,” or the like shall include notice delivered electronically. Notice requirements in the Probate Court must also comply with the Local Rules for Electronic Filing.

Rule LR71-PR00-602. Filing of Pleadings.

602.1. Compliance. All filings in the Probate Court must comply with the Local Rules for Electronic Filing.

602.2. Paper Pleadings. ~~Paper filings Routine pleadings, such as Inventories, Inheritance Tax Schedules, and Final Reports~~ Some documents, such as inheritance tax returns, are required to be filed in paper format. When necessary, such documents, may be filed with the Clerk for transmittal to the Court.

602.3. Preparation of Orders. Unless directed otherwise by the Court, All attorneys are required to prepare a form of Orders for use by the Court in all proceedings except when expressly directed otherwise by the Court.

602.4. ~~Guardianships~~ Signature and Verification. All estate and guardianships pleadings and other applications to the Court shall be signed and verified by the Petitioner fiduciary and signed by the attorney for the fiduciary.

602.5. Attorney Information. Unless the Court approves in advance, No personal representative of an estate or guardian may proceed without counsel. Prior to filing any pleadings in a matter before the Court, all attorneys shall enter an appearance in the given action and shall include in their appearance form the All pleadings filed shall contain the attorney's name, address, telephone number, and registration number to be retained within the electronic case management system.

602.51. Quest Information Form. The Quest Information Form provided by the Clerk of the Probate Court is to be completed and filed with the Clerk, accompanied with requested documents and fees per the form, before a cause number for the new action will be assigned.

602.6. Initial Petition. In addition to other relevant information, the initial petition to open an estate or guardianship shall contain include the name, address, social security number, birth date, and telephone number of the personal representative or guardian, if a person. The initial petition to open a guardianship shall include all of the same information of the proposed guardian. If the fiduciary is an entity as opposed to an individual, birth date is not required.

602.61. Nonresident Fiduciary. Nonresident personal representatives and guardians shall either appear before the Court on initial petition or else submit an affidavit describing their education, employment and lack of felony convictions.

602.7. Affidavit of Compliance. ~~An~~ The affidavit of compliance with the notice ~~provisions~~ ~~directed~~ requirements to creditors ~~in~~ of an estate proceeding ~~shall~~ may be timely filed with the Clerk of the Court.

Rule LR71-PR00-603. Bond.

~~603.1. Bond Waived by Will. Where, under the terms of the Will, the testator expresses an intention that the bond be waived, the Court shall set a bond adequate to protect creditors, tax authorities, and devisees.~~ General Statement. With respect to an estate, a guardianship or any other proceeding which involves the appointment of a fiduciary, the Court may in its discretion set such bond as is deemed adequate to protect the interests of the interested parties.

603.2. Bond Waived by Will. Although the terms of a will may express the testator's intention that no bond be required, the Court may set a bond adequate to protect creditors, tax authorities, and devisees.

603.3. Heir or Legatee Fiduciary. Where the fiduciary is an heir or legatee of the estate, the bond may be reduced by ~~said~~ such fiduciary's share of the estate, or the value of real estate, or other assets that cannot be transferred or accessed without court approval or order. The Court shall have the right to review the amount of bond if the Court should grant access to such property or asset.

~~603.3. Request for Service Without Bond. Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the Court may set bond in an amount adequate to protect the rights of Court may set bond in an amount adequate to protect the rights of the creditors and tax authorities only.~~

603.4. Unsupervised Estate. In an unsupervised estate, ~~bond may be set at the discretion of the court.~~ In the Probate Court, bond will be required unless the personal representative is the sole beneficiary. The Court may set bond in an amount as determined in the discretion of the Court.

603.5. Request for Service Without Bond. Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the Court may set bond in an amount adequate to protect the rights of the creditors only.

603.6. Corporate ~~Banking~~ Fiduciary. No bond shall be required in any estate or guardianship in which a corporate ~~banking~~ fiduciary that is qualified by law to serve as in such capacity is appointed to be either the sole fiduciary or one of several co-fiduciaries.

~~603.7. Petition to Open Estate. All petitions to open an estate or guardianship shall set forth the probable value of the personal property.~~ Nonresident Fiduciary. A nonresident fiduciary shall post bond prior to qualification as required by statute.

603.8. Insurance Agency. ~~The name and address of the insurance agency providing the corporate surety shall be typed or printed on all corporate bonds in any estate or guardianship.~~ Bond Requirements. All bonds filed with the Court shall comply with the provisions of IC 29-1-11-1 et seq. The name and address of the insurance underwriter as well as the name and address of the insurance agency providing the corporate surety, shall be typed or printed on all corporate bonds.

Rule LR71-PR00-604. Estate Inventory.

604.1. Time Period for Preparation and Filing. An inventory shall be prepared by the fiduciary in ~~an estates and guardianships as follows: Supervised estate, within sixty (60) days; guardianships, within ninety (90) days for permanent guardians and within thirty (30) days for temporary~~ guardians. All times relate to within two (2) months following the date of appointment of the fiduciary. In a supervised administration, the inventory shall be provided to interested parties upon request or may be filed with the Court. In an unsupervised estate, the inventory shall be provided to distributees upon request or may be filed with the Court.

604.2. Partial Inventory. In the event a partial inventory is prepared, all subsequent inventories must contain a recapitulation of prior inventories.

604.3. Sealed Inventory. In the event that the personal representative ~~should request that wishes to file an inventory be under sealed,~~ the Court may, in its sole discretion, seal such inventory. If an the inventory is sealed, it shall be maintained in the court reporter's evidence file in the Court in which such estate is filed held and protected according to Court policy and procedures.

Rule LR71-PR00-605. Real Estate.

605.1. Deed Requirements.~~All~~ A judge's signature is not required on a deed arising within an estate or guardianship. However, if a deeds is submitted to the Court for approval in either estate or guardianship proceedings, it shall be signed by the fiduciary and the signature notarized prior to its submission, unless the Court permits otherwise. All such deeds shall be submitted with the or at the time of the hearing on the Final Account unless the Court permits otherwise.

605.2. Unsupervised Estates. No Personal Representative's Deed shall be approved in unsupervised estates.

Rule LR71-PR00-606. Accounting.

606.1. Failure to Close Within One Year. Whenever an estate cannot be closed within one (1) year, the personal representative shall file a statement with the Court stating the reasons why the estate has not been closed if requested by the Court. In addition, the Court reserves the power to require the personal representative to file an intermediate accounting with the Court.

606.2. ~~Guardianship. All guardianship accountings shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance.~~

606.3. ~~Social Security/Medicare Benefits. All social security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accounting unless court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility, or because of the amount of such funds, the Court finds that such funds can only be used by the guardian or designated person for the benefit of use of such incapacitated person.~~

606.4. Statutory Format. All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

606.5. Payment of Court Costs. All court costs shall be paid and all claims satisfied and released before the Court will hearing a Motion on the Final Account, ~~and a Clerk's Certification thereof shall be filed with the Court before such Final Account shall be approved.~~

~~606.6. Closing Letters. The Federal Estate Tax Closing letter and the Indiana Inheritance Tax Closing letter (or the countersigned receipt) or a photocopy thereof, showing payment of all Federal Estate and/or Indiana Inheritance Tax liability in the estate, executed by the Internal Revenue Service or the Indiana Department of State Revenue, shall be attached to the Final Accounting at the time of filing, unless the Court has given prior written approval to attach such~~

~~letter to the Final Report, after filing but prior to the hearing on the Final Accounting.~~

Death Taxes. Before the Court will hear a motion to approve a final account, all federal and state death taxes must be paid and the estate must have received a closing letter from each appropriate taxing authority acknowledging such payment and releasing the estate from further liability. The attorney for the estate or the pro se fiduciary is responsible for maintaining paper or electronic copy of such closing letter(s) and shall provide any copies to the Court upon request. Further, the petition to close the estate shall include affirmation that such income and other taxes as may be applicable to the estate either have been paid in full or that they will be paid in full.

Rule LR71-PR00-607. Unsupervised Administration.

~~607.1. Payment of Court Costs. All court costs shall be paid and all claims satisfied and released on or before the date of the filing of the Closing Statement and a Clerk's Certification thereof shall be filed with the Court at the time such Closing Statement is filed with the Court.~~ Administrative Records. The attorney for the estate in an unsupervised administration shall maintain and preserve, in paper or electronic format, records of notices delivered to distributees at the opening of the estate, the estate inventory, correspondence with each distributee during the administration of the estate and a full record of the final accounting including supporting statements, invoices, appraisals, and distribution reports. Such records will be supplied to the Court upon request.

~~607.2. Closing Statement. The Court may enter an order approving the Closing Statement.~~ Every Closing Statement shall comply with LR71-PR00606.6 above.

~~607.3. Order on Closing. Even if not statutorily required, the Court may enter an Order approving the Closing Statement although an Order is not needed since such estate is closed by operation of law.~~

Rule LR71-PR00-607.15 Fees of Attorneys and Fiduciaries.

607.15. Approval. Fees paid to fiduciaries and to attorneys in the administration of a supervised estate or guardianship shall be reported to the Court with Motion on Final Account and such fees shall be subjected to approval by the Court at that time. No attorney or fiduciary fees will be determined or authorized for payment by the Court in any unsupervised administration of a decedent's estate.

Rule LR71-PR00-608. Miscellaneous.

~~608.1. Inheritance Tax Schedule. If the Court determines that no Inheritance Tax Schedule is required to be filed, a copy of the Court's order shall be served on the local representative of the Inheritance Tax Division of the Indiana Department of Revenue.~~

~~608.2. 608.1. Implementation of Rules. The court may adapt~~ adopt ~~procedures by standing order to effectuate implementation of these rules, and the Court may, in its discretion deviate from these rules when justice requires, but only upon showing of severe prejudice or hardship.~~

Rule LR71-PR00-609. Guardianships.

~~609.1. Filing of Current Reports. Current reports filed by a guardian of the person shall state the present residence of the incapacitated person and his or her general welfare. If the incapacitated person is an adult, a report of a treating physician shall be filed with the current report, verifying that the incapacity of the person remains unchanged since the date the guardianship was established or the date of the last current report and that the living arrangements for the~~

~~incapacitated person are appropriate.~~ Appearance of the Incapacitated Person. In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented, by the petitioner, showing that the incapacitated person is unable to appear. The Court may at any time appoint a guardian ad litem to investigate and protect the best interest of the incapacitated person.

~~609.2. Compliance with Other Rules. Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.~~ Physician's Report. In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person or such additional evidence as the Court shall require shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony

~~609.3. Financial Matters. Other than for routine matters, the guardian shall obtain court approval prior to taking any action on any financial matter pertaining to carrying out the guardian's duties and responsibilities for the protected person.~~ Appointment Without Notice, Pursuant to IC 29-3-3-4(a), no guardian of an adult shall be applied or protective order entered without notice , except upon verified allegations that delay may result immediate and irreparable injury to the person, or loss or damages to the property.

609.4. Appointment For a Minor. In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

- a. The child's present address;
- b. The places where the child has lived within the past two (2) years and the names and present addresses of the persons with whom the Child has lived during that period;
- c. General Information concerning school, health, etc...;
- d. Whether, to the petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or in any other state;
- e. Whether, to the petition's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

609.5. Statutory Sealed Affidavit. In every petition for the appointment or modification of a guardianship for a minor, the attorney representing the petitioner shall question the parties as to the circumstances that must be reported to the Court under IC 29-3-2-7, IC31-14-13-12, IC 31-14-14-6, IC 31-17-2-26, IC 31-17-4-11 and IC 31-17-5. Where appropriate, a sealed affidavit is to be filed with the Court in substantially the form as provided by the Court.

609.6. Petition to Open a Guardianship Estate. All petitions to open a guardianship shall provide an approximate value and description of the property of the incapacitated person or minor.

609.7. Inventory. An inventory shall be prepared by the fiduciary in a guardianship within 90 days following the date of appointment or within 30 days in the case of a temporary guardianship. The inventory prepared for the guardianship shall be filed with the Court on or before the last day identified above for preparation of the inventory.

609.8. Guardian's Report. The Guardian's Report filed by the guardian of the person as opposed to the estate, shall provide the present residence of the protected person and a description of his or her general condition. If the protected person is an adult, a report of an attending physician shall be filed with the Guardian's Report attesting to the fact that the incapacity of the person continues and that the living arrangements for the protected person are appropriate. The Guardian's Report is to be filed with the Court on the same schedule as required for accountings in compliance with Rule 609.9 following.

609.9. Accountings and Verification Required. When an individual or corporate fiduciary has been appointed to handle the financial affairs of a protected person, an accounting shall be filed within thirty (30) days after the first anniversary of the date the guardianship letters were issued. Thereafter, unless a contrary order is issued by the Court, all accountings shall be filed biennially. All guardianship accountings shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance. All Accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accounts will not be accepted.

609.10. Social Security Benefits. All social security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accounting unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility, or because of the amount of such funds, the Court finds that such funds can only be used by the guardian or designated person for the benefit of, or use for such incapacitated person.

609.11. Compliance with Other Rules. Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

609.12. Financial Matters. Other than for routine matters, the guardian shall obtain Court approval prior to taking any action on any financial matter pertaining to carrying out the guardian's duties and responsibilities for the protected person.

LR71-TR66-610. Receivership Estates.

610.1. Proceedings to Which This Rule is Applicable. This rule is promulgated, for the administration of estates by receivers or by other officers appointed by the court pursuant to Indiana Trial Rule 66.

610.2. Inventory and Appraisal. Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than twenty-eight (28) days after he or she has taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, and inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

610.3. Periodic Reports. Within twenty-eight (28) days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the Court otherwise directs, the receiver or other similar officer shall file reports of the receipts and expenditures and of his or her acts and transactions in an official capacity.

610.4. Compensation of Receiver, Attorneys and Other Officers. In the exercise of its discretion, the Court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the Court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the Court may direct.

Rule LR71-PR00-611. Miscellaneous.

611.2. Filings and Orders. Prior to the filing of any Order, parties shall provide notice to all other parties involved in the matter, and will have filed with the Court proper pleadings to support said Order. Parties will contact the Court to schedule a hearing for all matters filed with Court, requiring the same prior to the submission of any Order, parties will leave all matters requiring a hearing incomplete, if submitted electronically in Quest, all Orders submitted in final form prior to the day of the scheduled hearing, will be rejected. If a party wishes to vacate a hearing and submit a final Order for approval of the Court the party shall submit an additional Motion or pleading indicating the reason for vacating the hearing and submission of the Order.

611.3. Continuances. Parties requesting a continuance shall submit a Pleading or Motion to the Court, and shall indicate whether they have contacted all other parties, and shall indicate in the pleading or Motion the agreement or opposition to the request for continuance.

Rule LR71-PROO-612. Transfer of Cases.

612.1. Transfer of Cases from the Probate Court. The Judge of the Probate Court may, with the consent of either the Circuit Court Judge or the Superior Court Chief Judge, transfer any action, cause, or proceeding filed and docketed in the Probate Court to either the Circuit Court or the Superior Court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Circuit or Superior Court.

612.2. Transfer of Cases to the Probate Court. The Judge of the Circuit Court or the Chief Judge of the Superior Court may, with the consent of the Judge of the Probate Court, transfer any action, cause, or proceeding filed and docketed in either the Circuit Court or Superior Court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Probate Court.

Rule LR71-PROO-606. Sale of Assets.

613.1. Sale of Personal Property. To the extent that the sale of assets is not authorized by the decedent's will, no Petition to Sell Personal Property in a supervised estate or guardianship shall be granted unless a written appraisal, prepared by a person competent enough to appraise such property and setting forth its fair market value, is filed with the Petition or was previously filed with the inventory. This rule shall not apply to the personal property which is sold at public auction.

613.2. Date of Appraisal. All appraisals required by 613.1. above shall be made within one year of the date of the Petition to Sell.

613.3. Exempt Assets. No written appraisal shall be required for the sale of assets which are securities traded on a recognized stock exchange. Such assets include, but are not limited to, stocks, bonds, and mutual funds.